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10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION  
13

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 KASI TALEA POHAHAU,

18 Defendant,  
19

No. CR-06-0316 MHP

ORDER OF DETENTION

20 **I. INTRODUCTION**

21 A detention hearing in the above captioned case for defendant Kasi Pohahau was  
22 conducted on June 20, 2006. The Court has carefully considered the government's  
23 motion, with the attached affidavit of Special Agent John Illia and series of arrest reports  
24 detailing the defendant's criminal history, the pre-trial services report and  
25 recommendation and the arguments of both parties. The Court finds that the defendant  
26 poses a risk of flight, but that there are conditions, or combinations of conditions which  
27 could be fashioned in order to assure the appearance of the defendant for trial. However,  
28 the Court finds that the defendant poses a serious danger, and that there are no conditions,

DETENTION ORDER

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JUL 12 2006

RICHARD W. WIEKING  
CLERK OF DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

1 or combination of conditions which will assure the safety of the community if he is  
2 released. Therefore, for the reasons set forth herein, the Court Orders that the defendant  
3 be detained.

4 **II. FACTORS TO CONSIDER UNDER 18 U.S.C. § 3142**

5 **1. Charges and Rebuttable Presumption**

6 On May 2, 2006, the Grand Jury for the Northern District of California returned an  
7 indictment charging defendant Kasi Pohahau and eighteen others with conspiracy to  
8 distribute methamphetamine and cocaine in violation of Title 21 U.S.C. § 846. The  
9 indictment also charges POHAHAU with two substantive counts of distribution of  
10 methamphetamine and one substantive count of distribution of cocaine in violation of  
11 Title 21 U.S.C. § 841(a)(1). The conspiracy count and two of the substantive counts carry  
12 a minimum mandatory sentence of ten years to life in prison. Therefore, there is a  
13 rebuttable presumption that he is both a flight risk and a danger. See 18 U.S.C. §3142 (e).

14 **2. Defendant's Violent Nature and Criminal History**

15 The details surrounding defendant Pohahau's frequent contacts with law  
16 enforcement leave this Court convinced that he is a danger. During the course of this  
17 investigation, two co-operating witnesses (CW-7 and CW-8) attempted to introduce an  
18 undercover agent to POHAHAU. Posing as individuals involved in the drug trade, the  
19 two co-operating witnesses were in a unique position to witness the methods utilized by  
20 POHAHAU to distribute drugs. According to the affidavit of Special Agent John Illia  
21 submitted in support of a wiretap on defendant Pohahau's telephone, as plans were  
22 underway for POHAHAU to meet with the two co-operators, a third individual working  
23 with law enforcement informed the Special Agents of the FBI that instead of engaging in  
24 a drug deal with the co-operators as expected, POHAHAU had expressed an interest in  
25 killing CW-7 and CW-8 and stealing the drugs. The utilization of CW-7 and CW-8 was  
26 terminated due to concerns for their physical safety.

27 The Court is concerned that the proffered plans to rob and kill CW-7 and CW-8 are  
28 not isolated incidents. Rather, they are part of a history of threats, violence, and

1 intimidation by POHAHAU. The court notes that over twenty separate individuals  
2 provided information to the FBI regarding Pohahau but that they had uniformly and  
3 repeatedly expressed a concern for their safety and the safety of their families if their  
4 identities were revealed. In 1993, CI-1 received threats from POHAHAU due to CI-1's  
5 cooperation with law enforcement. CI-3 further advised that "the POHAHAU  
6 organization was also involved in "rips" (the armed robbery of drugs, money, or both  
7 from other criminals). CI -3 went on to explain that POHAHAU distributed drugs to the  
8 Tongan Crips in East Palo Alto. CI-10 stated specifically that POHAHAU and his family  
9 members would kill CI-10 and CI-10's family.

10 CW-4 provided information regarding a meeting in which POHAHAU planned to "rip"  
11 pseudoephedrine pills from a supplier. According to CW-4, POHAHAU asked two  
12 individuals present if they had "heat" which CW-4 understood to mean guns. POHAHAU  
13 said he would take care of it and asked the individual what kind of gun he wanted. CW-  
14 10 refused to acquire narcotics directly from POHAHAU as POHAHAU had the  
15 reputation of being harsh with anyone who could not pay their drug debts and also had a  
16 reputation for having people shot or beat up. CI-10 has personally witnessed POHAHAU  
17 beat, threaten and intimidate others.

18 Moreover, this Court finds that the danger posed by Pohahau is a characteristic  
19 with some history. According to the details of his arrest reports provided by the  
20 government, POHAHAU's first violent criminal act occurred when he was only eleven  
21 years old. On March 14, 1983, a fistfight broke out in the school yard at Garfield school  
22 in Redwood City. A teacher grabbed POHAHAU and tried to pull him away.

23 POHAHAU picked up the end of a heavy chain and tried to hit the teacher with it. Two  
24 days later, he was arrested by San Mateo County Sheriffs for the assault on the teacher.  
25 He was given his Miranda warnings and stated "Fuck you, man." As a result he was  
26 made a ward of the county and put on probation.

27 On March 6, 1984, while still twelve years old, defendant POHAHAU and his  
28 brother Sesi were arrested by Redwood City Police Department for assault. The incident



1 report reflects that POHAHAU and his brother struck and kicked a fifteen year old victim  
2 while the victim was waiting at a bus stop. He was booked into Hillcrest Youth  
3 Detention Facility and his mother notified.

4 On October 31, 1984, when POHAHAU had just turned thirteen, a student at the  
5 Physical Education class came running to his teacher for help as POHAHAU, his brother,  
6 and a third young man approached. During the fight which followed, the child victim was  
7 punched in the head and body and hit with a baseball bat. The teacher was also assaulted.

8 At age fourteen, POHAHAU was stopped for loitering. POHAHAU began to  
9 shout and swear at the officers and told them to "Fuck off" and "Get the Fuck away". He  
10 then called one of the officers a "mother-fucker" and a "cock-sucker." At one point,  
11 POHAHAU refused to take his hands out of his pockets requiring one of the officers to  
12 draw his weapon. POHAHAU took out his hands and got in a fighting position. He came  
13 at the officers and during the struggle, one officer was injured and treated at the hospital  
14 for a bruised rib and a sprained wrist. POHAHAU was cited for juvenile detention and,  
15 again, released to his mother.

16 On February 14, 1988, POHAHAU saw a relative of a person with whom  
17 POHAHAU had fought months earlier. POHAHAU approached him and said "You think  
18 I am afraid of you, I'm going to kick for fucking ass". POHAHAU proceeded to punch  
19 the victim in the neck. The victim fell down and pulled a gun pout of his waistband. As  
20 POHAHAU tried to flee, POHAHAU fell, and was shot in the elbow and mid-section  
21 requiring surgery. All charges were later dropped because the witnesses could not be  
22 located.

23 According to East Palo Alto police department records, in November of 1989,  
24 POHAHAU pulled up to a house and said to an individual "Do you want to fight?" As  
25 POHAHAU walked up to the victim, POHAHAU removed a gun from his waistband.  
26 The victim hit POHAHAU in the hand and tried to run away. POHAHAU shot at the  
27 victim. When the police arrived, they recovered a shell casing from the driveway. While  
28 two witnesses confirmed the details of the brandishing and assault of the weapon for the

1 police, neither witness came forward at the time of prosecution.

2 In March of 1990, the police went to POHAHAU's home on Fifth Avenue in  
3 Redwood City to speak to POHAHAU's brother. When they advised POHAHAU's  
4 brother that he was to be placed under arrest, the brother's response was "Fuck that" and  
5 the brother walked back into the house. The police followed him into the home to  
6 attempt to restrain the brother and the brother called for POHAHAU. POHAHAU came  
7 into the room and began to fight with the officers. POHAHAU's brother fled and one  
8 officer attempted to follow the brother. POHAHAU blocked the officer from following.  
9 POHAHAU's father then came into the room and began to assault the officer with a two-  
10 by- four.

11 On April 1, 1990, POHAHAU was stopped while driving a car, identified himself  
12 as SETA POHAHAU, and claimed to have no license. Later he admitted giving false  
13 information and was cited for providing false information to a police officer.

14 On Christmas Day in 1990, the family went to see the Godfather movie.  
15 POHAHAU's niece went to the restroom and when she returned, POHAHAU asked the  
16 man in front of him to move so that his niece could sit down. The man did not move and  
17 POHAHAU punched him. The victim ran outside. POHAHAU was detained in the  
18 theater by police and said "If they fight with her, I'm going to kick your ass and that stick  
19 and uniform don't scare me. I'll still beat you." POHAHAU was convicted of  
20 misdemeanor battery, and sentenced to twelve months probation, and 10 days in jail.

21 Less than twelve months later, on August 23, 1991, at age nineteen, four San  
22 Mateo County Sheriff's Deputies responded to the scene of another assault when  
23 POHAHAU walked up, walked past all four deputies and punched the victim causing him  
24 to move six to eight feet. POHAHAU made the spontaneous statement "I don't care if I  
25 go to jail, it was worth it." The reason that POHAHAU beat the victim was because he  
26 thought, mistakenly, that the victim had fought with his nephew. He was arrested for  
27 assault and battery and later convicted of misdemeanor battery.

28 On August 9, 1992, POHAHAU and three friends were on Main Street in

1 Redwood City. An officer saw a man hand a gun to POHAHAU. POHAHAU took the  
2 gun and ran around the corner to try to hide it in a planter box. POHAHAU was arrested  
3 and officers seized a fully loaded 9mm that was in the firing position with a round in the  
4 chamber. The case was later dismissed.

5 On October 21, 1993, an eight year old boy brandished in a crowd what appeared  
6 to be a gun. The crowd later determined that the gun was a toy. As a result, the crowd  
7 taunted the eight year old. He responded that he would go get his family. One hour later,  
8 POHAHAU and his brother and a third individual showed up. They assaulted two people  
9 in the crowd. When they were driving away, a long barrel firearm was brandished out of  
10 the window of the vehicle at the crowd. The victim and five witnesses all stated that they  
11 would not cooperate with the investigation any further out of fear of retaliation from the  
12 POHAHAU family. When the police arrived to interview POHAHAU and his brother,  
13 the suspects admitted to confronting the victim because he "fucked with their family."

14 On April 2, 1997, a BNE agent was on an unrelated surveillance and parked near  
15 411 5<sup>th</sup> Avenue, Redwood City, California, the POHAHAU family home, and one of the  
16 properties proposed for bail. The plain clothes officer had his radio in his lap.  
17 POHAHAU came out of the house, and told him to "get the fuck out of there." The BNE  
18 agent identified himself as a law enforcement officer. POHAHAU told him "I don't give  
19 a fuck, we got guns too." POHAHAU then pulled out a gun from his waistband, and  
20 motioned with the weapon for the agent to move along. The agent drove around the  
21 corner and met with two deputies. Shortly thereafter, a vehicle departed 411 5<sup>th</sup> Avenue  
22 with POHAHAU and two others inside. The vehicle pursued the BNE agent's car and  
23 POHAHAU motioned downward indicating that he had a weapon. When finally arrested,  
24 POHAHAU issued racial epithets and slurs to the African American BNE officer. The  
25 case was later dismissed.

26 On March 7, 1994, POHAHAU arranged to have two people transport six  
27 kilograms of cocaine for him to St. Louis, Missouri. A traffic stop was conducted in  
28 Oklahoma and the drugs were discovered. One of the people cooperated and confirmed



1 that POHAHAU was the one that arranged the transportation. POHAHAU pleaded guilty  
2 to a conspiracy to distribute marijuana and was sentenced fifteen months in prison and  
3 three years of supervised release.

4 The fifteen months in prison apparently did little to rehabilitate or deter  
5 POHAHAU. On a Friday night in October 1998, POHAHAU drove into the VFW bar  
6 parking lot in Redwood City, CA. He got out of a Mercedes with two friends, and  
7 immediately walked over to a Hispanic male and hit him over the head with a bottle. The  
8 victim sustained cuts over his head and face and was covered with blood. A fight ensued  
9 between more Hispanic males and POHAHAU's friends and shots were fired. A  
10 restraining order was issued as a result of the incident.

11 The Court is mindful of the arguments of Pohahau's counsel that these reports are  
12 merely written records of the incidents and not subject to cross-examination and this  
13 Court is also mindful that some of these incidents did not result in convictions. Yet the  
14 Court discerns a disturbing pattern of behavior from Pohahau's history and that pattern is  
15 one of violence.

16 The Court is also concerned that on May 3, 2006, Special Agents of the FBI  
17 executed a search warrant at the residence of POHAHAU, who is a felon. They  
18 recovered a loaded Glock ammunition magazine. Agents also recovered a total of  
19 \$33,816.00 in cash.

### 20 **3. Nature of the Offense**

21 On July 15, 2005, and again on September 1, 2005, United States District Judge  
22 Martin J. Jenkins signed orders authorizing the interception of cellular telephone number  
23 (510) 750-7372 which was used by co-defendant Damasen to facilitate his illegal  
24 activities. Conversations intercepted on the wiretap demonstrated that Damasen was  
25 involved in the distribution of methamphetamine and cocaine in the San Francisco Bay  
26 Area and elsewhere.

27 Through use of the wiretap, agents learned that Damasen planned to supply two  
28 co-defendants with cocaine and methamphetamine. Agents observed the meetings and

1 then seized 494.4 grams of cocaine from one and one half of a pound of crystal  
2 methamphetamine from the other. Agents also determined that Rafael Ramirez and  
3 Anthony Quintana were drug sources of supply for Damasén. The identification of  
4 Ramirez as the drug source led to a series of court-authorized wire intercepts of a number  
5 of different cellular telephones used by Ramirez to facilitate his illegal activities.<sup>1</sup>  
6 Collectively, these wire intercepts, along with physical surveillance, drug seizures, and  
7 other methods of investigation, demonstrated that Quintana was supplying Ramirez with  
8 large quantities of methamphetamine which Ramirez then distributed in the San Francisco  
9 Bay Area and Hawaii.

10 On November 29, 2005, after intercepting a series of conversations regarding a  
11 shipment of methamphetamine to Hawaii, agents conducting surveillance observed  
12 Ramirez personally transport two large boxes to a nearby FedEx/Kinkos where he  
13 dropped off one of the boxes. On December 2, 2005, United States Magistrate Judge  
14 Elizabeth D. Laporte signed a search warrant for the package. The search warrant was  
15 executed that same day and resulted in the seizure of approximately 16 pounds of crystal  
16 methamphetamine concealed inside four sealed one-gallon cans. Subsequent analysis by  
17 the DEA Western Regional Laboratory reflected the exhibit consisted of 6,663 grams  
18 actual methamphetamine. The quantity of methamphetamine seized was the equivalent of  
19 over 850,000 doses.<sup>2</sup>

20 On November 29, 2005, United States District Judge Jeffrey S. White signed an  
21 \_\_\_\_\_

22 <sup>1</sup> On October 18, 2005, United States District Judge Martin J. Jenkins signed an order  
23 authorizing the interception of telephone number (650) 826-5219, used by Ramirez and of a  
24 Mexican Nextel used by Quintana. On November 16, 2005, United States District Judge Jeffrey  
25 S. White signed an order authorizing the continued interception of the wire communications of  
26 (650) 826-5219 used by Ramirez, the interception of telephone number (650) 921-3635, used by  
27 Ramirez, and the interception of a Mexican Nextel used by Quintana.

28 <sup>2</sup> Under the United States Sentencing Guidelines, only 1.5 kilograms of pure  
methamphetamine triggers a Level 38, the maximum under U.S.S.G. § 2D1.1. In this one  
shipment, there was more than four times the amount of methamphetamine needed to trigger the  
top level.



1 order authorizing the interception of telephone number (650) 670-5026, used by co-  
2 defendant POHAHAU. Interceptions over the wiretap and physical surveillance  
3 demonstrated that Quintana and Ramirez were also a source of supply to codefendant  
4 POHAHAU. On December 6, 2005, Jose Luis Ayala, acting under the direction of  
5 Quintana, Ramirez, and Jose Antonio Zarate Araiza, delivered approximately 22 pounds  
6 of crystal methamphetamine to Sione Tuifua and Natali Cisneros, both of whom were  
7 acting under the direction of POHAHAU, at the residence of Tuifua located at 105 Nueva  
8 Street, Redwood City, California. Agents subsequently observed Cisneros carrying a  
9 brown cardboard box from his vehicle into a post office and turn it over to a clerk for  
10 delivery to Hawaii. A federal search was subsequently executed with respect to the  
11 package located in Honolulu. This search warrant resulted in the seizure of  
12 approximately 22 pounds of crystal methamphetamine concealed inside sealed one-gallon  
13 food cans.<sup>3</sup> Subsequent analysis by the DEA Southwestern Regional Laboratory reflected  
14 that one package contained 6,915 grams actual methamphetamine (889,999 doses) and the  
15 second package contained 2,722 grams actual methamphetamine (349,000 doses).

16 Interceptions over the wiretaps also demonstrated that co-defendants Araiza and  
17 Ayala were involved in transporting drugs and money between Northern California and  
18 Southern California for Quintana and Ramirez and led to wire intercepts over a telephone  
19 used by Araiza.

20 On January 3, 2006, United States District Judge Barry Ted Moskowitz signed an  
21 order authorizing interceptions over telephone number (619) 827-2699, used by Araiza.  
22 On January 18, 2006, California Highway Patrol (CHP) effected a traffic stop of a vehicle  
23 driven by Tocayo. As a result, the CHP identified Araiza and determined the vehicle he  
24 was driving was subject to tow. Araiza was allowed to leave, and a search of the vehicle  
25 prior to it being towed led to the seizure of nearly \$1.4 million dollars in US currency  
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27 <sup>3</sup> In a subsequent search of 103-105 Nueva Street, the residence of Sione Tuifua, agents  
28 discovered a machine for sealing gallon cans.

1 concealed inside luggage found in the vehicle.

2 On February 28, 2006, United States District Judge Martin J. Jenkins signed an  
3 order authorizing the interception of wire communications over two additional telephones  
4 used by Ramirez. Wire intercepts and physical surveillance led agents to believe that a  
5 delivery of cocaine was to take place. That same day, Oakland Police Department  
6 Officers conducted a traffic stop of the vehicle. A subsequent search of the vehicle led to  
7 the seizure of approximately 50 kilograms of suspected cocaine concealed inside two  
8 large speaker boxes. Ramirez was later intercepted discussing the fifty kilogram shipment  
9 with Quintana.

10 The Court authorized electronic surveillance on the telephone used by POHAHAU  
11 resulted in identification of co-defendant Jason Marx as a distributor for POHAHAU. On  
12 May 3, 2006, a search of the residence of Jason Marx was conducted. Upon entering,  
13 Agents found Marx in the process of flushing methamphetamine down the toilet. Agents  
14 recovered three pounds of crystal methamphetamine and two loaded firearms from under  
15 Marx' bed.

16 Although the strength of the evidence is the least important factor for the Court to  
17 consider, here the Court notes that the evidence appears strong and reveals that Pohahau  
18 is a multi-district, multi-pound/kilogram level distributor of methamphetamine and  
19 cocaine. According to the government's proffer, records of the organization seized at the  
20 time of Pohahau's arrest reveal that in an eight month period, POHAHAU received 170  
21 pounds of methamphetamine at a cost to him of \$1,440,000.00<sup>4</sup>.

### 22 **III. LEGAL AUTHORITY TO DETAIN THE DEFENDANTS**

23 Under the Bail Reform Act, an authorized judicial officer may order the detention  
24 or release of a defendant pending trial. A rebuttable presumption of both dangerousness  
25 and risk of flight exists when the defendant is charged with a drug felony that carries a  
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27 <sup>4</sup>POHAHAU obtained the methamphetamine for approximately \$8500 per pound and was  
28 able to sell it in Hawaii for \$26,000 per pound.

1 maximum term of imprisonment of ten years or more. 18 U.S.C. §3142 (e). Once the  
2 defendant produces some evidence to rebut the presumption, the presumption has been  
3 rebutted. United States v. Cook, 880 F. 2d 1158, 1162 (10<sup>th</sup> Cir. 1989). However, the  
4 presumption does not disappear, but rather remains as a factor for consideration in the  
5 Court's determination. Id.

6 The potential sentences in this case far exceed those sufficient to trigger a  
7 presumption and place an enormous incentive on the defendants to flee. In the matter  
8 before this court, the defendant faces a maximum of life in prison, and a minimum  
9 mandatory term of imprisonment of ten years. In the case of defendant POHAHAU, who  
10 has a prior drug felony, his exposure is a minimum mandatory twenty years to life.<sup>5</sup> As  
11 for the rebuttable presumption of danger, 18 U.S.C. § 3142(f)(1), identifies those types of  
12 crimes in which "a rebuttable presumption arises that no condition or combination of  
13 conditions will reasonably assure the safety of any other person and the community." 18  
14 U.S.C. § 3142(e). See United States v. Salerno, 481 U.S. 739, 750 (1987) ("The act  
15 operates only on individuals who have been arrested for a specific category of extremely  
16 serious offenses.... Congress specifically found that these individuals are far more likely  
17 to be responsible for dangerous acts in the community after arrest.") (citation omitted);  
18 S.Rep. No. 98-225, p. 6-7 (1983), reprinted in 1984 U.S.C.C.A.N. 3182, 3189; United  
19 States v. Koon, 6 F.3d 561, 566 (9<sup>th</sup> Cir. 1993) (justifying the presumption of  
20 dangerousness in 18 U.S.C. § 3142(f)(1) because "there is a small but identifiable group  
21 of particularly dangerous defendants as to whom neither the imposition of stringent  
22 release conditions nor the prospect of revocation of release can reasonably assure the  
23 safety of the community or other persons").

24 The judicial officer may detain a defendant if the government proves by a  
25 preponderance of the evidence that the defendant poses a risk of flight. United States v.  
26

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27 <sup>5</sup>It should be noted that POHAHAU is not a citizen of the United States and retains ties to  
28 the nation of his birth, Tonga.



1 Motamedi, 767 F. 2d 1403, 1407 (9<sup>th</sup> Cir. 1985), United States v. Gebro, 948 F. 2d 1118,  
2 1121 (9<sup>th</sup> Cir. 1991). The preponderance of evidence shows a risk of flight where, among  
3 other factors, the weight of the evidence is enough to alert the defendants to a "reasonable  
4 possibility of conviction." United States v. Townsend, 897 F. 2d 989, 993-94 (9<sup>th</sup> Cir.  
5 1990). In assessing flight, a court may consider that defendant having no visible means  
6 of support, no property who is well known to narcotics officers for some period of time  
7 and has ample funds to provide him with a means of absconding is a poor flight risk and a  
8 case in which bail is properly denied. Further, in cases with large sums of cash available  
9 to the defendant the court may draw the conclusion that the defendant has the means to  
10 abscond. A defendant's financial condition and the length of sentence he or she faces are  
11 of particular importance in assessing the risk of flight.

12 The judicial officer may also detain a defendant where the government shows by  
13 clear and convincing evidence that no release condition will reasonably assure the safety  
14 of the community. Specifically, detention may be ordered where the court finds no  
15 condition or combination of conditions could prevent the defendant's continued or future  
16 criminal activity. United States v. Salerno, 481 U.S. 739 (1987).

17 In assessing danger, physical violence is not the only form of danger contemplated by  
18 the statute. Danger to the community can be in the form of continued narcotics activity or  
19 even encompass pecuniary or economic harm. United States v. Reynolds, 956 F.2d 192  
20 (9<sup>th</sup> Cir. 1992). Propensity to commit crime generally may constitute a sufficient risk of  
21 danger to come within the act. See, United States v. Karmann, 471 F. Supp. 1021, 1022  
22 (C.D. Cal 1979).

23 Ultimately, the government bears the burden of proving by a preponderance of  
24 the evidence that the defendant poses a flight risk, or by clear and convincing evidence  
25 that the defendant poses a danger to the community. United States v. Gebro, 948 F. 2d  
26 1118, 1120 (9<sup>th</sup> Cir. 1991); United States v. Motamedi, 767 F. 2d 1403, 1405 (9<sup>th</sup> Cir.  
27 1985).

#### 28 IV. CONCLUSION

1 POHAHAU is a convicted drug felon with a clear and convincing history of  
2 violence. The Court finds that there are no conditions or combination of conditions  
3 which will guarantee the safety of the community from the danger posed by POHAHAU.  
4 THEREFORE, the Court ORDERS that he be detained.

5  
6 DATED: July 12, 2006

  
HON. NANDOR J. VADAS  
UNITED STATES MAGISTRATE JUDGE